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Enlightened Practices in Regulatory Programs

This volume is the first in a series of brief profiles of noteworthy or innovative practices by federal government departments and agencies. The series is being developed and distributed by the Regulatory Best Practices Committee.

The Committee is a joint undertaking of the Regulatory Affairs Division of the Treasury Board of Canada Secretariat and the Federal Law Enforcement Under Review Secretariat of the Solicitor General of Canada.

Members of the Committee are departmental representatives from the regulatory community.

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Foreword

In 1991, the Regulatory Affairs Division of the Treasury Board of Canada Secretariat established the Regulatory Best Practices Committee to identify innovative and noteworthy practices in regulatory programs.

Since mid-1992, the Committee has provided a forum for regulatory managers to share ideas, concerns and success stories. The objective is to build a greater *esprit de corps* by researching, analysing and sharing examples of enlightened regulatory practices.

The Regulatory Affairs Division and the Federal Law Enforcement Under Review Secretariat share a common interest in improving regulatory program management through sharing "best practices" information. Accordingly, the Committee was created under the aegis of both organizations.

The government's reply to the report of the Sub-committee on Regulations and Competitiveness of the Standing Committee on Finance, focuses on creating a more "responsive" regulatory regime. Such a regime would result in developing better regulatory solutions faster. This means more efficient and more effective protection for Canadians.

Consumers will also benefit by gaining earlier access to a wider range of products and services. In addition, the regulatory burden imposed on industry will be reduced, and Canadian taxpayers will benefit from more cost-effective approaches being implemented.

The government is committed to making regulatory programs more responsive to the new challenges facing Canada. To meet these challenges, we can build on many innovative ideas already in use throughout the regulatory community.

This document is the first volume in a continuing series. The profiles in this volume reflect the work of the Committee from November 1992 to March 1993. The Committee meets regularly to hear presentations by their colleagues in the regulatory community. The sponsoring department and the Committee prepare and review a profile of the practice before it is published.

The Committee hopes that this document will be a catalyst so that other success stories will be shared as well. If you would like to participate on the Committee or if you know of enlightened practices that should be recognized, please contact Doug Blair of the Regulatory Affairs Division at 952-3463.

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Executive Summary

Delegation of Powers to the Private Sector

Four examples have been provided to the Committee of ministerial powers, duties, or functions being successfully delegated to the private sector. Three examples come from Transport Canada, one from Fisheries and Oceans.

Delegation to Company Check Pilots (CCPs)

Company Check Pilots are employed by commercial air carriers to carry out most of the checks of aircraft pilot competence. Transport Canada (TC) grants the CCPs authority to assess the proficiency of commercial pilots, and its inspectors regularly monitor the work of the CCPs. Air carriers and TC both save time and money by relying on CCPs.

Delegation to Designated Flight Test Examiners (DFTEs)

Designated flight test examiners are authorized by TC to conduct flight tests for private and commercial pilot licences. The examiners must meet specific experience requirements, and they have to participate in periodic training. In addition, TC regularly monitors the work of individual DFTEs. The flight testing is done at locations convenient to pilots and to industry. Both industry and the department save time and money.

Delegation of Design Approval for Aeronautical Products

Delegates perform a design approval function similar to that of TC engineers. Delegates are either aviation industry manufacturers, air carriers, or their designated employees. They approve aircraft and aircraft components. They also approve any repairs and modifications to them. TC engineering standards are used as guides in appointing delegates and renewing their authorization. The department monitors the work of delegates on an ongoing basis. Relying on in-house expertise in the industry yields benefits in cost and convenience for both sides.

External Delegation of Quality Control in Fish Processing

All fish processing plants in Canada must employ a Quality Management Program (QMP) that focuses on "critical control points". Those plants whose plans and practices meet Fisheries and Oceans' (F&O) approval are allowed to promote the quality of their product by using a special logo. This scheme prevents problems and helps fish processing plants market their products. The QMP permits the department to perform primarily a monitoring role, leaving most of the inspection activity and quality control to industry itself.

Discretion to Grant Exemptions or Permissions

Agriculture Canada (AC) has provided one example of discretion to grant exemptions or permissions.

Discretion to Grant Exemptions or Permissions for Importing Non-Crop Seeds

The Seed Section of the Plant Products Division has discretion to authorize the importation of some less common seeds without requiring individual approval in most cases. There are seeds that do not appear on official lists of species utilized for crops. The plan improves departmental efficiency by eliminating unnecessary applications for the director's authorization. Industry and the department save time and money. At the same time the department fulfils its regulatory mandate.

Transfer of Functions to the Private Sector

Consumer and Corporate Affairs Canada (CCAC) has provided an example of transferring functions to the private sector.

Transferring Preclearance of Food and Non-Alcoholic Beverage Commercials to the Canadian Advertising Foundation

Responsibility for preclearing advertisements for food and non-alcoholic beverages has now been transferred from CCAC to the Canadian Advertising Foundation (CAF). The department provides policy input and advice, periodically auditing the program to ensure it complies with all relevant regulations. The new preclearance process delivers timely regulatory services to industry, while maintaining public safety and accurate consumer information.

Alternative Methods of Securing Compliance

Two examples of alternative methods of securing compliance by industry come from CCAC.

Alternative Methods of Securing Compliance in Administering the *Competition Act*

The Bureau of Competition Policy at CCAC has developed a new scheme to encourage compliance with the *Competition Act*. This scheme is based on communication and education to enhance general understanding of the Act. Bureau staff utilize case selection criteria to identify priority cases for prosecution. These criteria also assist in identifying projects targeted for alternative means of resolving cases. As a result, the Bureau is able to make more efficient use of declining enforcement resources. At the same time, it is able to maintain and encourage competition in a more effective manner.

Alternative Case Resolution Mechanisms in Administering the *Competition Act*

Alternative case resolution techniques are utilized by the department's Bureau of Competition Policy to deal with alleged incidents of non-compliance

with the *Competition Act*. The Bureau uses a range of methods, including investigative visits, written undertakings and consent orders, where appropriate, as alternative means to resolve cases judged to be of low priority. It may refer an investigation to the Attorney General for prosecution or place a case before the Competition Tribunal if it appears unlikely there will be an acceptable resolution. These alternative case resolution mechanisms allow the department to allocate scarce resources more efficiently to the most serious cases, yet ensure that less serious conduct does not go unchecked.

Consensus Building

Health and Welfare Canada (HWC) is in the process of developing new approaches to building consensus with industry in forming and implementing new regulations.

Consensus Building with Industry in Developing and Implementing New Regulations

If the government engages in extensive consultations when formulating new regulations industries have the opportunity to comment on policies that directly affect them. These comments may, however, express widely differing opinions, making it difficult to build consensus and to bring the consultation process to a definitive close. Senior officials at HWC are taking new approaches to consultation. These include developing a formal notification document that is distributed to industry. The document outlines concerns raised and sets out final amendments to the proposed regulations.

Delegation of Powers to the Private Sector

Delegation to Company Check Pilots (CCPs) (Transport Canada)

Function

In the interests of public safety, it is necessary to ensure that all commercial pilots are competent. Rather than having government aviation inspectors conduct all tests or inspections of pilot proficiency, Transport Canada (TC) delegates much of this responsibility to pilots employed by commercial air carriers. These "in-house" inspectors are known as Company Check Pilots (CCPs). They carry out most of the assessments related to pilot proficiency, as well as renewals of instrument (i.e., non-visual) rating tests.

Organization

A number of criteria are used in choosing CCPs. Among these are a pilot's flying expertise; levels and type of training; and the ability to conduct various tests associated with assessing pilot proficiency. Candidates must have a specific number of flight hours. They must also demonstrate satisfactory understanding of TC policies and procedures, in addition to knowledge of their own air carrier's operating procedures. TC delegates CCP status to only a limited proportion of the pilots in any air carrier company. Approximately 450 CCPs carry out a total of about 7,700 pilot proficiency and instrument rating checks per year.

At present, CCPs carry out more of those checks than TC inspectors. The percentage of checks performed by CCPs is much greater for large air carriers.

Monitoring

When CCPs are appointed, they must attend a training course and are guided step by step through applicable manual materials by departmental officials. As well, a TC inspector monitors new CCPs during the first few pilot proficiency checks.

Overall, TC inspectors monitor CCPs at least annually in two ways. Company check pilots are monitored during their own pilot proficiency check, and while they conduct a pilot proficiency check on another pilot. TC also uses audits as part of the ongoing monitoring process. In serious cases of unsatisfactory results, TC may restrict or revoke a delegated CCP authority.

Advantages

- TC and air carriers that have CCPs in their ranks, particularly in the case of operations located in remote regions, save considerable travel time and costs.
- Industry avoids delays due to waiting for TC staff to become available to carry out inspections.
- Veteran pilots who are constantly in touch with current conditions

through their own employment carry out the necessary but routine checking of pilots.

- TC inspectors are freed up to concentrate on areas where public safety might be at greater risk.

Contact Persons

Grant Mazowita, Director, Legislation and Compliance, Aviation Regulation, Transport Canada (990-1225), or Art Laflamme (990-1121).

Delegation to Designated Flight Test Examiners (DFTEs) (Transport Canada)

Function

Delegation to Designated Flight Test Examiners (DFTE) are authorized to conduct flight tests for private and commercial licences on behalf of the department. They also conduct flight tests for multi-engine endorsements (an additional privilege that may be granted to those holding a licence). Industry requirements for prompt flight testing services are met because DFTEs are available at convenient locations across Canada. Moreover, TC achieves significant net savings by delegating these tasks to DFTEs.

Organization

A number of criteria are used to evaluate DFTE candidates including their pilot record; industry and community reputation; and active employment as a professional pilot. Candidates must meet specific experience requirements for flight test examination categories. In addition, they must attend a training workshop and take written, oral, and practical examinations.

Successful candidates receive an appointment letter from TC. This letter indicates the authority delegated, the flight tests the candidate is authorized to conduct, the period for which the delegation is valid, and the region in which the delegate is authorized to operate. The letter also stipulates the conditions under which a delegate's authority may be cancelled. When DFTEs are appointed, they also receive materials guiding them on how to perform their functions.

Periodic training, in the form of biennial workshops, ensures that DFTEs are up-to-date and consistent in their work with department standards. A delegate is required to attend one workshop every two years in order to have his or her appointment renewed. A joint industry/TC advisory committee meets on an annual as well as an ad hoc basis, in order to deal with all matters relating to flight training and licensing, including the DFTE program.

In 1991 there were 210 DFTEs. They carried out the necessary testing for 3,806 private licences, 1,482 commercial licences, and 939 multi-engine endorsements.

Monitoring

DFTE are monitored in two ways. Departmental inspectors carry out individual monitoring by observing DFTEs in operation. In addition, TC has implemented a centralized database for information on flight tests and examinations. This database is connected to all regions. Departmental personnel can obtain from the computer a list of those DFTEs who, in performing their duties as examiners, have reached a problem stage, or are approaching this point.

Advantages

- Industry requirements for prompt flight testing services are met at convenient locations.
- Industry saves on both waiting and travel time.
- TC realizes significant net savings, making better use of scarce resources.

Contact Persons

Grant Mazowita, Director, Legislation and Compliance, Aviation Regulation, Transport Canada (990-1225), or Jack Scott (990-1005).

Delegation of Design Approval for Aeronautical Products (Transport Canada)

Function

Delegates are involved in approving designs for aeronautical products and for repairs or modifications to those previously approved. (In this profile, the term "delegates" refers to companies and their designated employees to whom design approval functions have been delegated.) Delegates, who may be aviation industry manufacturers, air carriers, or their employees, perform a design approval function similar to that of TC engineers. Delegates may, in turn, engage experienced consulting engineers from outside the company to witness and evaluate tests being conducted on aircraft or aircraft parts.

Organization and Monitoring

Delegates are selected upon their education, area of expertise and work experience. Applicants must have a minimum of one year's experience working directly with TC in processing engineering data. They must also submit their individual Engineering Procedures Manual for departmental approval. Any change in responsibility affecting a delegate requires Transport Canada's approval.

Individual delegates have access to the same specialty courses as TC engineers. The role, responsibilities and limitations of delegates are set out in the *Airworthiness Manual*. Individual delegates are allowed to perform only those duties defined in the approved engineering manual pertinent to their work.

TC engineers monitor the work of delegates informally, as well as through quality assurance reviews in Transport Canada's regional offices. This

monitoring ensures that departmental responsibilities are upheld and that delegates maintain departmental standards.

There are approximately 300 individuals conducting design approval work for companies designated as delegates by and for the Minister of Transport. Delegates perform approximately 4,000 to 5,000 approvals for aircraft and components per year.

Advantages

- Industry receives more timely services and paperwork is reduced. This process also avoids duplication of quality control efforts.
- When properly audited, delegation improves the quality of compliance decisions.
- Delegation provides TC with savings in workload and in time that would be lost to travel.
- Scarce resources are used more efficiently.
- The private sector bears the costs associated with product changes or modifications.

Contact Persons

Grant Mazowita, Director, Legislation and Compliance, Aviation Regulation, Transport Canada (990-1225), or Bob Mather (952-4320).

External Delegation of Quality Control in Fish Processing (Fisheries and Oceans)

Function

In February 1992, Fisheries and Oceans (F&O) launched a new program in cooperation with the fish processing industry, i.e., the Quality Management Program (QMP). While QMP practices may be traced back a decade, this initiative is the first to incorporate QMP principles into a mandatory regulatory framework for industry. Under the program, the role of industry in monitoring its own performance against Canadian Fish Inspection Regulations is increased. As a result, F&O is able to focus its resources on plants with lower compliance levels, and to those areas that have a higher risk.

Organization and Monitoring

In order to receive federal registration to export fish products from their home province and Canada, each processing plant must develop and document its in-house QMP. An F&O inspector evaluates the scheme and verifies that the plant implements its QMP as written.

In-plant QMPs must cover all applicable "critical control points" identified by the F&O, i.e., those points in time or physical location during fish processing when failure of preventive measures exposes consumers to unacceptable risks related to tainted or unwholesome fish products or economic fraud.

Under QMP, each critical control point must be specified in terms of:

- standards to be met;
- monitoring procedures;
- a corrective action or system; and
- a record-keeping system.

The plant's monitoring scheme must specify the sampling measures, and the type and frequency of inspections that will be carried out. (Experience has demonstrated that close monitoring and constant reinforcement is necessary for some processors in the early stages of establishing a QMP scheme.)

Based on the F&O's assessment of a plant's QMP plans and implementation, it receives a rating of either excellent, good, satisfactory, or fail. Plants receiving a "fail" rating must stop processing and correct the deficiencies. Those receiving a "satisfactory" rating are encouraged to strive for a higher rating. Plants rated "good" or "excellent" are granted the right to label their fish products with the "Canada Inspected" logo, thereby receiving product certification benefits. Many plants have undergone voluntary temporary closures to correct shortcomings that could affect their status.

Advantages

- The QMP focuses on preventing problems at the production stage (the pre-marketing stage).
- The QMP provides consumers with greater assurance that Canadian fish products are safe and wholesome.
- The QMP facilitates compliance with international norms.
- The QMP facilitates the harmonization of inspection schemes.
- Cooperative planning with industry is achieved by developing QMP schemes, as well as by regulations that make it mandatory for the industry to participate in the program.
- The plant rating and product certification aspects of the QMP benefit industry in terms of quality, credibility, and marketability of fish products in Canadian and international markets.

Contact Persons

Dennis Brock, Head of Enforcement, Fisheries and Oceans (990-0108), or Vance McEachern, Chief, Quality Management Program, Fisheries and Oceans (993-6930).

Discretion to Grant Exemptions or Permissions

Discretion to Grant Exemptions or Permissions for Importing Non-Crop Seeds (Agriculture Canada)

Function

To maintain the high standards of seeds used for crops in Canada, Agriculture Canada (AC) screens the importation of seeds of any species not listed as a "crop kind" of plant. This ensures Canada's global reputation for quality agricultural products is maintained. AC developed an innovative scheme that allows the Seed Section of the Plant Products Division, on behalf of the Director, to authorize the importation of seeds that are not on official lists of species used for crops. The department is thus able to eliminate unnecessary applications for the Director's authorization, saving time and money for industry and the department. At the same time, the department fulfills its regulatory mandate.

Organization

When seeking an authorization for importation under s. 33 of the *Seeds Regulations*, potential importers simply make application, identifying the seed variety they wish to import. AC then performs the requisite research to determine if authorization is appropriate.

Involving the Director or the Director's delegate in examining each case was very inefficient. Yet the Plant Products Division needed to retain discretionary power. In the mid-1980s, the division published a catalogue of "pre-authorized" species. Species on this list do not require special authorization because they are pre-approved. Accompanying this list was a catalogue of "pre-forbidden species," which are not pre-approved for importation. Both lists are updated periodically by adding varieties as they become more common within the industry and more familiar to the department. Only the remaining (unlisted) non-crop species must then be dealt with on an individual basis.

Advantages

- The system as presently organized provides adequate protection to both the Canadian agricultural industry and the general public, without placing undue burden on the industry.
- Publishing the "pre-authorized" and "pre-forbidden" lists of species helps avoid uncertainty and unnecessary applications, saving time and money for both industry and the department.

- Flexibility in the form of periodic updates to both lists responds to both industry and regulatory needs.

Contact Persons

Mike Scheffel, Chief, Legislation, Seed Section, Plant Products Division, Agriculture Canada (995-7900, ext. 4398).

Transfer of Functions to the Private Sector

Transferring Preclearance of Food and Non-Alcoholic Beverage Commercials to the Canadian Advertising Foundation (Consumer and Corporate Affairs Canada)

Function and Background

Preclearing of commercials for food and beverage products offers protection to both consumers and industry against false and misleading advertising. In recent years, however, there has been a dramatic rise in the volume of commercial scripts submitted to Consumer and Corporate Affairs Canada (CCAC) for preclearance, coupled with declining government resources. This situation has made it increasingly difficult for the department to meet the deadline of providing advance approval of commercial scripts within 10 working days. Industry called for more timely delivery of services, and for a more efficient appeals process for disputed commercial scripts. After review of the process, a recommendation was made that responsibility for preclearing advertisements be transferred to the Canadian Advertising Foundation (CAF). The CAF preclearance program, established in October 1992, provides more timely delivery of regulatory services to industry, yet maintains public safety and accurate consumer information.

Organization and Monitoring

The Preclearance Unit of the CAF reviews commercial scripts submitted for preclearance, and does so within 48 hours of receiving them. Food Advisory and Appeals committees have been established under the program, with representatives from industry, broadcasters, consumers, and CCAC. The Food Advisory Committee oversees the preclearance process, issuing policy guidelines and other preclearance criteria to the CAF. The Advisory Committee will coordinate "user" seminars for industry to provide advice on the submission of commercial scripts, to give updates on preclearance criteria, and to discuss recommendations from interested parties that are intended to enhance regulatory compliance. The Appeals Committee provides reviews of appeals or disputed commercials within 96 hours. Preclearance is carried out on a cost-recovery basis.

CCAC contributes to the preclearance process by providing policy input and advice to both the Food Advisory and Appeals committees. To ensure continuity in the preclearance process, the department is working closely with the CAF during the 12-month transition phase. Before transferring preclearance responsibilities, CCAC published an advisory notice, detailing the new procedure to be followed in submitting scripts for preclearance, as well as giving the applicable fee structure.

To ensure all relevant regulations are complied with, CCAC will periodically audit the preclearance program. The department is in the process of developing a monitoring scheme. Concurrent with transferring preclearance responsibilities to the CAF, CCAC requested that the Canadian Radio-television and Telecommunications Commission amend the regulations under the *Broadcasting Act* that require mandatory preclearance by CCAC. This amendment was completed in April of 1993.

Advantages

- The CAF preclearance program streamlines the regulatory process, while maintaining public safety and accurate consumer information.
- The CAF preclearance scheme provides a more timely delivery of regulatory services, enabling industry to be more competitive.
- The CAF Food Advisory Committee opens the preclearance process to input from all major stakeholders.
- The Appeals Committee provides a more open, timely review of appeals.

Contact Person

Katharine E. Gourlie, Director, Consumer Products Branch, Consumer and Corporate Affairs Canada (953-3187).

Alternative Methods of Securing Compliance

Alternative Methods of Securing Compliance in Administering the *Competition Act* (Consumer and Corporate Affairs Canada)

Function and Background

In enforcing and administering the *Competition Act*, the Bureau of Competition Policy ensures a competitive marketplace for Canadian consumers, producers, retailers and distributors. Concerns over mounting litigation costs, a desire for more timely resolution of disputes, an increase in the volume of complaints received, and declining enforcement resources meant changes had to be considered. To encourage compliance with the Act, techniques based on promoting proactive compliance and alternative case resolution methods are being used. Using this approach, the Bureau is able to make more effective use of resources, while still fulfilling its objectives of maintaining and encouraging competition in a more effective manner.

Organization and Monitoring

The Bureau uses a number of different techniques to encourage and facilitate compliance with the Act. These include presentations by Bureau staff to trade associations, as well as the production of guidelines and other publications designed to enhance understanding of the Act. Bureau staff also conduct seminars for businesses and associations on topics relevant to the Act, provide consultation to businesses on guidelines regarding application of the Act, and provide advisory opinions to help prevent infractions. Bureau staff also investigate alleged violations of the Act, relying on such sources as complaints received; materials submitted for undertakings or notifiable transaction provisions of the Act; and other sources of information such as industry contacts and trade journals.

A critical component of the Bureau's approach to compliance is the use of case selection criteria to identify priority cases for prosecution, and to help identify those projects targeted for alternative case resolution. Cases are prioritized based on criteria grouped into three major areas: economic welfare, enforcement policy, and management considerations. Projects determined to be low priority are targeted for alternative case resolution means, which include such action as information visits, consent orders, and undertakings. The Bureau's guidelines for ranking cases are provided to staff to assist them in prioritizing cases.

Presently the Bureau is working on a performance measurement project to

evaluate the effectiveness of the overall approach.

Advantages

- Techniques promoting proactive compliance and alternative case resolution techniques enable the Bureau to meet its objectives of maintaining and encouraging compliance in a more effective manner.
- Prioritizing enforcement projects ensures resources are allocated to the most significant cases.
- Prioritizing enforcement projects results in savings in court costs for both industry and government.
- Prioritizing enforcement projects enables the Bureau to deal with complaints in a more timely and effective fashion.

Contact Persons

Don G. Mercer, Director, Compliance and Coordination Branch, Consumer and Corporate Affairs Canada (997-3763), or Marcie Girouard, Senior Commerce Officer, Compliance and Coordination Branch, Consumer and Corporate Affairs Canada (953-9431).

Alternative Case Resolution Mechanisms in Administering the *Competition Act* (Consumer and Corporate Affairs Canada)

Function

The Director of Investigation and Research, Bureau of Competition Policy, may use alternative case resolution mechanisms (ACRMs), to deal with alleged incidents of non-compliance with the *Competition Act*. The Director will turn to ACRMs when case selection criteria reveal that a particular project is of low priority, and therefore not well suited for prosecution in criminal matters. Contested proceedings in the case of civil matters are another situation where the Director will use ACRMs. These mechanisms function most effectively when there is a credible risk of formal proceedings being instituted, and there is an incentive for those under investigation to seek alternate resolutions. The use of ACRMs enables the Bureau to apply its resources more efficiently to the most significant cases. At the same time, it can deter anticompetitive behaviour and secure present and future compliance with the Act.

Organization

A range of ACRMs are available to the Director in resolving low priority cases. In certain instances, an inquiry of alleged anticompetitive conduct may be suspended after an investigative visit reveals that voluntary corrective action

has been taken to resolve the Director's concerns under the Act.

At the next level of priority, written undertakings may be accepted by the Director from the parties under investigation. These undertakings are designed to remedy or surmount actual or potential effects of anticompetitive practices. Written undertakings are voluntary in nature; the party involved is not pressed by the Bureau to enter into negotiations. Once a written undertaking is given and complied with, the Director may either suspend an inquiry or continue to monitor conduct in affected markets for a reasonable period of time. To encourage parties under investigation to adopt written undertakings, the Bureau publicizes the fact that undertakings are available in appropriate cases. The Bureau makes it clear that parties under inquiry must take the initiative in pursuing this alternative. Information letters, information bulletins, and presentations by Bureau staff provide details to industry about this alternative.

Consent orders are the third option available to the Director. For civil matters, these are issued by the Competition Tribunal upon agreement of the Director and the party under investigation. Consent prohibition orders may be obtained on criminal matters, by applying to the Attorney General.

Negotiations will not be pursued for an indefinite period of time. Should the Director not be able to achieve an acceptable resolution to a case, it may either be referred to the Attorney General for prosecution for criminal matters or placed before the Competition Tribunal for civil matters.

Advantages

- Utilizing ACRMs allows the Bureau to allocate resources more effectively to the most serious cases.
- Using ACRMs increases the capacity of the Bureau to deter anticompetitive behaviour and to encourage present and future compliance with the Act.
- Using ACRMs provides a faster means of resolving low priority cases than relying upon the courts.
- Applying ACRMs to low priority cases ensures that less serious conduct will not go unchecked.
- Applying ACRMs provides a more challenging role for Bureau staff, expanding their function from simple information-gathering to more active participation in investigations and outcomes.

Contact Persons

Don G. Mercer, Director, Compliance and Coordination Branch, Consumer and Corporate Affairs Canada (997-3763), or Marcie Girouard, Senior Commerce Officer, Compliance and Coordination Branch, Consumer and Corporate Affairs Canada (953-9431).

Consensus Building

Consensus Building with Industry in Developing and Implementing New Regulations (Health and Welfare Canada)

Regulation Problem Area

Present requirements for product labelling do not allow consumers to make informed quality comparisons and purchasing choices between those products treated with phosphate salts, and those that are not. Adding phosphate salts and water to hold curing substances to solid cut meat and poultry products is an accepted practice in a number of industrialized countries. This may contribute, however, to reduced protein content in these foods. This is a cause of concern for several government departments, including Health and Welfare Canada (HWC). As a result, HWC is preparing amendments to the *Food and Drug Regulations* to require product display panels to contain a clear statement as to nutrition content.

To secure industry consensus on the proposed regulations, extensive interdepartmental consultations were carried out involving industry and related stakeholders. At present, senior HWC officials are in the process of modifying the consultation process in an attempt to bring about consensus among a variety of divergent industry views.

Background to Consultation

An extensive review and consultation process between government and industry was a key component in preparing the proposed regulations. An Interdepartmental Consultation Letter was issued to all relevant parties, which in turn led to correspondence and consultation between government and industry on an individual basis. An intersectoral working group was then convened, with representation from all interested parties. After review and consultation between government and the working group, new regulations were developed and published in September 1992 in the *Canada Gazette*, Part I. The working group prepared minutes of meetings and informal reports during this stage, although no formal documentation was produced.

Publication of the proposed regulations in *Canada Gazette*, Part I, did not bring the consultation process to a close as expected. Indeed, the department received an unanticipated level of industry comments and new recommendations for amendments to the regulatory proposal following publication.

Taking New Approaches to Consultation

At present, senior officials at HWC are attempting to build consensus among a variety of divergent industry opinions before the regulations are published in *Canada Gazette*, Part II. Informal meetings have been held with industry to discuss concerns and proposals for changes to the new regulations. In an attempt to bring the consultation process to a definitive conclusion, HWC has prepared a formal notification document to be distributed to industry. This document discusses the concerns raised by industry following initial publication of the new regulations. It also outlines final amendments that will be made to the proposed regulations. Those who receive this notification document will be requested to contact the department by a specific date if they require additional clarification before the regulations are published in Part II.

Advantages

- Carrying out extensive consultations in developing new regulations provides industry and other stakeholders with the opportunity to comment on policies that directly affect them.

- Providing industry with a formal notification document outlining concerns that have been raised and the plans for proceeding should facilitate bringing the consultation process to a conclusion.

- Giving industry this extra opportunity for input should improve the atmosphere for cooperative compliance.

Contact Person

Barry L. Smith, Chief, Food Regulatory, International and Interagency Affairs Division, Health and Welfare Canada (957-1748).

Future Presentations

Exemptions, Waivers, or Dispensations from Regulatory Requirements

Regulatory programs allow different degrees of flexibility for inspectors or managers to grant exemptions from what may sometimes be unfair or inappropriate standards. A balance is needed between observing the essentials, even in the face of irritation on the part of the industry, and preserving some room to manoeuvre.

We have an illustration from the Seed Section, AC, in this volume, but we hope to hear of other precedents on which to draw.

Certification and Training of Investigative or Enforcement Staff Holding Delegated Powers

Enforcement officers and inspectors have extraordinary powers delegated to them to discharge their responsibilities, for example, the power to seize records, aircraft, or contaminated products. The public, including regulated industries, must have confidence that these delegatees have the knowledge and skill to wield such powers. Training and certification are critical facets of delegated regulatory mechanisms.

One program that could be looked at is the plan by F&O to train and certify 100 "Aboriginal Guardians" to act as "fishery guardians," initially monitoring and enforcing food fishing by Indian people.

Public Consultation or Consensus Building on Regulatory Policy and Practices

Industry stakeholders want to comment on regulatory policy that could impact upon them. They want to be sure that their freedom to act is not more constrained than that of their competitors. Sometimes there are also consumer groups that want to be consulted.

A national office of pollution prevention has been inaugurated by Environment Canada (EC). Part of its task will be to set up round tables with industry to seek consensus on ways to prevent pollution.

HWC is using consensus building with industry in developing new regulations. This is illustrated in the approach described in this document. Other departments may have examples of public consultation from their own experience.

Innovative Ways of Avoiding or Recovering Costs

Some departments have found ways to augment inspection services while having industry assume the costs.

In some situations where TC inspections involve unscheduled travel to foreign countries or to remote parts of Canada, air carriers provide transportation without charge to the inspectors.

The fishing industry pays for F&O observers on boats off both the Atlantic and Pacific coasts. A recent innovation concerns two British Columbia fisheries. Operators wanted to lengthen the season to optimize the value of their catch, and agreed to pay the extra enforcement costs incurred by F&O.

Another example from F&O is of interest. The department must obtain biological samples to forecast surpluses of fish stocks that can be harvested and marketed. One method is to allow a fishing company to take an agreed catch (instead of cash) in payment for fish samples and biological information supplied to F&O.

These and other illustrations of cost saving approaches might be profitably addressed at a future meeting of the Committee.

Adopting International Standards as Industry Benchmarks

HWC is contemplating adopting food safety standards set by an international commission. This might avoid some duplication and delays in developing standards, and could have implications for competitiveness. There may be examples of such a strategy being used by other departments.

Computer-Based Tracking Systems

A number of departments are contemplating or already making innovative use of computers. Some may use computers to keep track of regulations. Others could use a data bank to monitor the riskier aspects of a regulated industry or as a tool in deciding when to grant an exemption or waiver. Initiatives in this area are likely to be of interest to all departments.

Sharing Responsibilities with the Provinces and Territories

If mechanisms for sharing responsibilities in an orderly way avoid costly and unnecessary duplication, this could amount to a best practice. Environment Canada (EC) is hoping to negotiate agreements whereby it will not enforce its regulations if a province has equivalent standards. Other departments may supply examples of their current sharing arrangements.

Innovative Approaches to Drafting Regulations

Every regulator complains about the slow process of drafting and processing regulations. EC could describe the advantages and side effects of importing a team of Department of Justice lawyers. This team became temporary in-house drafting counsel to meet a high demand for new regulations.

Finding Alternatives to Regulation

This is a concern of everyone participating in the Regulatory Best Practices Committee. EC hopes to establish a "strategic system" for finding alternatives to regulation. Such a system could prove to be worth copying by other departments.

The Regulatory Best Practices Committee

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Enlightened Practices in Regulatory Programs

This volume is the second in a series of brief profiles of noteworthy or innovative practices by federal government departments and agencies, developed and distributed by the Regulatory Best Practices Committee.

The Committee is a joint undertaking of the Treasury Board Secretariat, the Regulatory Affairs Division and the Federal Law Enforcement Under Review Secretariat (FLEUR), of the Solicitor General of Canada. It is made up of departmental representatives from the regulatory community.

Foreword

In 1991, the Regulatory Affairs Division of the Treasury Board Secretariat established a committee to identify innovative and noteworthy practices in regulatory programs.

Since mid-1992, the Regulatory Best Practices Committee has provided a forum for regulatory managers to share ideas, concerns and success stories. The objective is to build a greater esprit de corps within the regulatory community by researching, analyzing and sharing examples of enlightened regulatory practices.

The Regulatory Affairs Division and the Federal Law Enforcement Under Review Secretariat (FLEUR) of the Solicitor General of Canada share a common interest in improving regulatory program management. Accordingly, the committee was created under the aegis of both organizations.

In its reply to the Standing Committee on Finance called Regulations and Competitiveness, the government focuses on creating a more "responsive" regulatory regime. Such a regime will result in faster development of better regulatory solutions. This means more efficient and more effective protection for Canadians.

Consumers will also benefit by gaining earlier access to a wider range of products and services. In addition, the regulatory burden imposed on industry will be reduced, and Canadian taxpayers will benefit from the implementation of more cost-effective approaches.

The government is committed to making regulatory programs more responsive to the new challenges facing Canada. To meet these challenges we can build on many innovative ideas already in use throughout the regulatory community.

This is the second volume of a series that reflects the work of the committee from April to December 1993. The committee meets regularly to hear presentations of enlightened practices by colleagues in the regulatory community. A profile of each practice is prepared and reviewed by the sponsoring department and the committee prior to its publication.

It is hoped that this document will act as a catalyst for the continued sharing of such success stories. If you would like to participate on the committee or if you know of enlightened practices that should be recognized, please contact Doug Blair, Regulatory Affairs Division, TBS, at (613) 952-3463.

Executive Summary

Engaging PCO(Justice) Lawyers as In-House Regulation-Makers (Environment Canada)

A special PCO (J) unit operates in Environment Canada (EC) to provide early advice on the drafting of regulations, to participate in the drafting, and to provide legal opinions on statutory criteria to be met in regulation drafting. The unit also provides related training for EC staff to enhance departmental capabilities in this area. The presence of the unit streamlines the regulation-making process, and encourages cooperation among departmental officials and drafting lawyers.

Adopting International Standards for Packaging in the Transportation of Dangerous Goods (Transport Canada)

Along with many other countries, Canada has implemented the recommendations of the United Nations Committee of Experts on the Transportation of Dangerous Goods for the design and production of dangerous goods packaging. All dangerous goods manufactured and packaged in Canada and carried by international marine transport, international or domestic air transport, must be in packaging that displays the UN marking. Adoption by Canada of the UN recommendations promotes the international harmonization of standards. In addition, the adoption of a new preventive approach, based on the monitoring of markings and conformity assessment has produced higher levels of conformity with standards than the previous system did.

Using Advisory Panels in the Regulatory Review Process (Agriculture and Agri-Food Canada)

Agriculture and Agri-Food Canada has established the External Regulatory Panel to oversee and assess the Department's regulatory plans and policies. The Panel ensures that the Department's Annual Regulatory Plan meets federal regulatory policy objectives, and that the viewpoints of stakeholders are taken into account. As a result, external stakeholders can oversee and comment on the regulatory review process. The Panel also provides the Department with a way to obtain an initial reaction from stakeholders before engaging in a comprehensive outside consultation process.

Stakeholder Consultation in the Development of Regulatory Policy and Regulations (Federal Environment Assessment Review Office)

FEARO has adopted a novel approach to the development of regulations required under the new Canadian Environmental Assessment Act (CEAA). A Regulatory Advisory Committee (RAC) has been meeting regularly since November 1991 to provide all major stakeholders with an opportunity to contribute to the formation of regulatory policy and regulations. The RAC process enables the achievement of consensus on certain issues early in the regulatory development process, highlights areas where differences of view must be resolved, and gives participants some sense of ownership in the legislative package.

Training and Designation of Guardians Holding Delegated Powers (Fisheries and Oceans)

Fisheries and Oceans (F&O) now trains and certifies special Aboriginal Fishery Guardians to monitor fishing activities by people from their own groups. The program enables the Department to carry out its responsibilities more effectively with the same number of full-time officers. Hiring aboriginal enforcement officers provides employment to people in their local areas and allows them to draw upon their knowledge, experience, and community links.

Administrative Penalties as Alternatives to Prosecution (Agriculture and Agri-Food Canada)

The Food Production and Inspection Branch has designed an Administrative Monetary Penalties System (AMPS) that emphasizes compliance rather than punishment for regulatory violations. The system is intended for serious violations or for violations that other administrative actions fail to deter. Allowing the Branch to levy penalties or to negotiate appropriate remedial measures encourages offenders to begin immediate corrective action. The AMPS is more efficient and cost effective than the prosecution process, and allows for a more consistent treatment of those in the industry.

Using Front-End Assessment Guidelines for Regulatory Initiatives (Agriculture and Agri-Food Canada)

Agriculture and Agri-Food Canada developed Front-End Assessment Guidelines for regulatory initiatives to ensure that all relevant issues are fully considered prior to drafting and implementation. A Guidelines document details the steps to be taken by Department program officers in carrying out a front-end assessment, including the

completion of a preliminary impact assessment for all potential regulatory or non-regulatory options identified. The front-end assessment of regulatory initiatives ensures that the Department determines the availability of resources to enforce initiatives in advance. These assessments also enable the Department to identify potential problem areas and to amend proposed initiatives accordingly, prior to implementation.

Engaging PCO(Justice) Lawyers As In-House Regulation-Makers (Environment Canada)

Function and Background

A large number of current and anticipated requirements for the drafting of regulations peculiar to Environment Canada's regulatory functions led to an increased need for consultation with the Privy Council Office, Justice Section (PCO(J)). As a result, Environment Canada (EC) requested that a PCO(J) special unit be set up at the Department to provide early advice on compliance with regulation drafting prerequisites, to participate in the drafting of regulations, and to provide training in these areas for EC personnel. The unit also occasionally gives legal opinions on statutory criteria to be met in the drafting of regulations and on the interpretation of regulation-making powers in departmental legislation. This two-year pilot project has operated since January 1992.

The Best Practices profile presented here demonstrates the advantages and key elements of innovative approaches to the drafting of regulations.

Organization

The PCO(J) unit does not supplant the role played by the Department's Legal Services Unit (LSU), which provides EC with advice on all aspects of its work. The PCO(J) unit provides specialized expertise on the legal and drafting criteria of the Statutory Instruments Act and on the interpretation of regulation-making provisions of departmental statutes. As in the past, LSU lawyers work with EC officials in the development of regulatory policy to ensure that regulations reflect managerial thinking and are enforceable. Managers, PCO(J) and LSU lawyers work together in public consultation and in drafting, from the earliest stages.

EC is developing a departmental listing of drafting priorities based on a similar system and used by Agriculture and Agri-Food Canada. In the interim, the general PCO(J) system for setting priorities among drafting needs is used. For example, regulations that may lapse if not renewed and those under which the government collects money may have a higher priority than opinion files and new drafting projects. EC has adapted the PCO(J) system to take departmental priority lists into account.

The Department encourages officials to telephone or drop in on the unit with questions concerning drafting criteria. During meetings on regulations, the principles for drafting are explained. In addition, the PCO(J) unit has offered one-day drafting seminars, in which a significant number of departmental

lawyers and officials have participated. At the request of early participants, follow-up seminars have been held that included case studies and practical drafting exercises. Orientation seminars have also been offered for directors. All of these efforts have contributed to the training of EC personnel.

The PCO(J) unit works bilingually in drafting, editing and training. All personnel and office costs come from the EC budget.

As a result of this pilot project, EC is considering establishing a centralized regulatory affairs office to coordinate all EC regulatory activities. Such a system could facilitate problem-solving and the flow-through of the regulatory process.

Advantages

- Because the PCO(J) unit is dedicated to the work of EC and EC regulations do not have to compete for time with those of other departments, the turnaround time for making regulations is reduced.
- The initial involvement of the unit in the development of certain regulations may be useful when EC consults with industry on these regulations.
- Obtaining advice on compliance with statutory criteria for drafting reduces the likelihood of time-wasting errors.
- Seminars and the availability of rapid advice increase employees' knowledge of regulation drafting, which enhances the Department's capabilities in this area over the long term.
- The presence of an exclusive PCO(J) unit has increased the level of mutual understanding between departmental officials and drafting lawyers, minimizing potential frustrations of all involved and creating an environment of cooperation and team-building.
- The ability to drop in on the unit has allowed Department officials to meet revisers and editors, whom they would not encounter in the normal course of events.
- Because the unit is on site, it is easier to organize problem-solving meetings and to make quick changes.

Contact Person

Bill Findlay, Manager, Regulatory Affairs, Environment Canada,

997-3207.

Adopting International Standards for Packaging in the Transport of Dangerous Goods (Transport Canada)

Background

Previously in Canada, responsibility for compliance with standards in the construction of packagings for the transport of dangerous goods rested with manufacturers. This self-certification program was changed to a preventive approach based on a conformity assessment after a study by the Transport of Dangerous Goods (TDG) Directorate of Transport Canada revealed high levels of non-conformance with existing standards. At about the same time, the standards themselves were also changed when Canada, along with many other countries, implemented the recommendations of the United Nations Committee of Experts on the Transportation of Dangerous Goods for the design and production of dangerous goods packaging. The TDG Directorate and an advisory committee are establishing and implementing the UN standards. Since January 1991, the packaging of all dangerous goods manufactured and packaged in Canada and carried in international marine transport or international or domestic air transport must display the UN marking.

The Best Practices profile presented here demonstrates the advantages and key elements of the adoption of international standards as the basis for regulation.

Organization and Monitoring

To implement the UN packaging standards in Canada, a UN package design registration system has been established. The specific requirements manufacturers must follow for the construction, performance testing and marking of UN packagings are set out in National Standard of Canada CAN/CGSB 43.150. It was written by the Canadian General Standards Board, an organization accredited by the Standards Council of Canada. The standards have been incorporated, by reference, into the Transportation of Dangerous Goods Regulations.

Manufacturers follow specific procedures to develop dangerous goods packagings. First, they must determine the packing group for the dangerous good to be transported and the relevant code for the packaging design type. The severity of the performance tests then carried out to evaluate packaging integrity varies according to the packing group to which the packaging has been assigned. The objective is to achieve a package design that performs in a consistent fashion when filled and closed for shipment.

Once all required performance tests have been carried out, the manufacturer prepares and submits a Packaging Design Report to the TDG Directorate, which evaluates the report. The Directorate registers approved designs and assigns each one a Design Registration Number. This number must be displayed in the marking on all UN-standard packagings manufactured after 1991 and filled in Canada.

In addition, to ensure that the tested design continues to be applied during production, the UN standard requires a quality assurance program. To enable the TDG Directorate to evaluate these programs effectively, manufacturing facilities that produce packagings such as steel and plastic drums for higher-risk goods must register with an independent quality assurance auditing organization. Manufacturers may register with an auditing organization accredited by the Standards Council of Canada, such as the Quality Management Institute or the Canadian General Standards Board, which use ISO 9002 or CSA Z 299.3 standards to assess a manufacturer's quality assurance program. A letter from the auditing organization certifying adherence to the relevant standards is also acceptable.

Advantages

- Adoption of the UN recommendations for dangerous goods packaging promotes the international harmonization of standards.
- Adoption of international standards assures that Canada uses high standards without unnecessarily duplicating standard-setting efforts.
- The quality assurance program required by the UN standards ensures that the tested design continues to be applied during production.
- The adoption of the conformity assessment approach, which focuses on problem prevention rather than on assessment after production, has produced higher levels of conformity with standards than the previous system did, as well as cost savings for government.
- Reliance on performance standards, rather than the previous system of restrictive and detailed design specifications for packaging, gives industry more flexibility.
- Working with an expert advisory committee on UN and Canadian standards maintains a pool of shared expertise and helps government consult with industry more effectively.

Contact Persons

Dave Westman, Senior Specialist, Transport of Dangerous Goods Directorate, Transport Canada (990-1169), or Ken Kendall, Packaging Specialist, Transport of Dangerous Goods Directorate, Transport Canada (990-1166).

Using Advisory Panels in the Regulatory Review Process (Agriculture and Agri-Food Canada)

Background

In accordance with directives on regulatory review given in the February 1992 federal Budget, Agriculture and Agri-Food Canada conducted an assessment of its regulations. To assist the Department in this review, a 1992 Regulatory Advisory Panel was convened. In assessing the Department's regulations, the Panel considered: industry needs for improving competitiveness; the health, safety, and economic welfare of consumers; environmental effects; and regional considerations.

The Panel's final report to the Minister recommended that an ongoing external advisory panel on regulations be established to oversee the Department's regulatory plans and policies, and to assess progress against the Department's regulatory plans. As a result of this recommendation, the Agriculture and Agri-Food Canada External Regulatory Panel was established.

The Best Practices profile presented here demonstrates the advantages and key elements of using advisory panels in the regulatory review process.

Organization

Reporting to the Deputy Minister, the Agriculture and Agri-Food Canada External Regulatory Panel provides the Department with a permanent challenge and advisory function. The Panel will ensure that the Department's Annual Regulatory Plan meets federal regulatory policy objectives and the criteria applied during the Department's 1992 Regulatory Review. In addition, the Panel ensures that the Department pursues issues identified in the 1992 Regulatory Review, that ongoing regulatory planning focuses on interdepartmental and federal-provincial regulatory matters, and that the Department makes progress in delineating interdepartmental and federal-provincial roles and responsibilities. The Panel will also play an advisory role in any other regulatory reviews carried out in related subject areas in any part of the Department to ensure that they are appropriate and that the viewpoints of stakeholders are taken into account. Finally, the Panel will develop an information exchange-working relationship with other relevant Department panels, such as the Food Production and Inspection Panel, as well as with any other industry regulatory advisory panels that may be established.

The Panel currently consists of seven individuals, including a private consultant and people from the agri-food sector, a consumer

group and, academe. The members do not represent particular constituencies. A secretariat to be established at the Department's Food Production and Inspection Branch will support the Panel's work. It is anticipated that the Panel will meet approximately three times per year.

Advantages

- The Panel allows external stakeholders, knowledgeable about the impact of regulations on industry and on other sectors, to oversee and comment on the regulatory review process.
- The Panel provides the Department with a way to obtain an initial reaction from affected stakeholders before engaging in a comprehensive outside consultation process.
- Working with the Panel ensures that the Department remains focused on the relevant policy issues identified in the Department's 1992 Regulatory Review and that the Department's Annual Regulatory Plan meets federal regulatory policy objectives.

Contact Persons

Mary Komarynsky, Acting Director, Regulatory Affairs Division, Management Strategies and Priorities Directorate, Food Production and Inspection Branch, Agriculture and Agri-Food Canada (992-2114, ext. 4143), or Alan Goldrosen, Food Production and Inspection Branch, Agriculture and Agri-Food Canada (992-2114).

Stakeholder Consultation in the Development of Regulatory Policy and Regulations (Federal Environmental Assessment Review Office)

Background

The process of assessing potential ecological impacts of proposed projects involving certain federal responsibilities is currently carried out under the Environmental Assessment and Review Process (EARP) Guidelines Order. A new statute, the Canadian Environmental Assessment Act (CEAA), was passed in 1992, but will not be proclaimed until related regulations are finally approved. A major package of four regulations was published in the Canada Gazette in September 1993. The Federal Environmental Assessment Review Office (FEARO) is shepherding the development of the regulations for the new statutory regime.

FEARO chose to adopt a novel approach to the formulation of regulations. It has consulted extensively with all stakeholders throughout the process of regulatory planning and drafting.

The Best Practices profile presented here demonstrates the advantages and key elements of stakeholder consultation in the development of regulatory policy and regulations.

Organization

In the autumn of 1991, FEARO carried out public consultation meetings on regulatory planning in different parts of the country. That experience led FEARO to decide that a transitory process would not be as good as receiving continuing advice. Consequently, a Regulatory Advisory Committee (RAC) was set up. It has been meeting every two to three months since November 1991.

The RAC members come from the following diverse constituencies: six from industry associations; four from environmental non-governmental organizations; two from aboriginal groups; four from provincial governments; and four from federal departments (Environment, Fisheries and Oceans, Industry, and Natural Resources). FEARO provides the Chair and the Secretariat and covers the consultation costs.

By having a multi-stakeholder process at all stages, FEARO hoped to avoid a last-minute confrontation with parties claiming they were not adequately involved in the regulatory planning, as sometimes happens. Tougher issues might surface sooner, enabling all sides to recognize the real problems. The process is also seen as more democratic than that used in the formulation of most regulations.

The RAC has also provided input concerning the parent statute, the CEAA, and in June 1993 asked that it be proclaimed quickly. The RAC has helped to promote the concept of a public registry of environmental assessment documents, as outlined in the CEAA. This public registry, and the relatively easy access to data would provide it, could turn out to be the best monitoring and implementation tool in the Act. The RAC has also disseminated information about the CEAA and the planned regulations.

In mid-September 1993, a major package of regulations under the CEAA was published in Part I of the Canada Gazette, although stakeholders had not yet reached a consensus on all elements of the regulations. Some stakeholders argue that aspects of these regulations, particularly those determining which kinds of projects must be assessed, reflect the pro-industry bias of some provincial governments, rather than the balance arrived at through the RAC. Other observers suggest that the regulations published in the Canada Gazette reflect concerns of federal departments that were not subjected to scrutiny by the RAC.

Advantages

- The RAC is a democratic process enabling all major stakeholders to have input into the development of regulatory policy and regulations in the early stages.
- The RAC allows all sides to reach consensus on certain issues early in the regulatory development process, so they can focus on the major stumbling blocks.
- A consensus achieved through multi-stakeholder consultation is more likely to be in the general public interest.
- Regulations that have undergone extensive scrutiny and consideration are likely to be better crafted.
- The RAC process reduces the possibility that one player will raise major objections when an agreed package appears ready for promulgation and implementation.
- The partners in the process are likely to feel more ownership of the legislative package, and are more likely to cooperate in the implementation of the Act and regulations.

Lessons Learned

- The RAC mechanism, which provides a stable sounding board during the development of regulatory initiatives, is preferable to ad hoc public consultation meetings.
- It is important to involve interested federal departments from the outset of stakeholder consultations as active participants, rather than as observers, so that their concerns can be discussed adequately, rather than being held back until the later stages.

- While stakeholders should be encouraged to feel ownership in the draft regulations and policies around which a consensus is built, it must always be clear that the government has ultimate responsibility for producing regulations. Bodies such as the RAC are advisory only.

Contact Person

Stephen Hazell, Director, Legislation and Regulatory Affairs, Federal Environmental Assessment Review Office (997-2217).

Training and Designation of Guardians Holding Delegated Powers (Fisheries and Oceans)

Background

For geographical, cultural and legal reasons, fisheries regulations have been difficult in areas where Aboriginal peoples traditionally fish. Recent legal decisions and negotiations regarding aboriginal fishing rights have added to the complexity. Yet the Department and Aboriginal leaders have similar goals, namely to ensure adequate but sustainable yields of fishery resources.

On May 31, 1990, in the Sparrow decision, the Supreme Court of Canada ruled that Aboriginal communities have a right under Section 35 of the Constitution to fish for food, social and ceremonial purposes. The court said natives have first claim on the fish resource after conservation needs are met and that native fishing rights must be interpreted flexibly over time to permit their evolution.

The department's response was the $140 million, seven-year Aboriginal fisheries strategy (AFS). Part of the strategy was to involve aboriginal people in the conservation and protection of fishing resources in order to recognize their right to enhanced participation in the fishery under Sparrow and to aid DFO in carrying out its mandate to preserve and protect the resource.

The best practices profile presented here, demonstrates the advantages

and key elements of providing training and delegated responsibility to the Aboriginal people for the monitoring and enforcement of their fishery.

Organization

Under AFS, DFO and aboriginal groups agreed to a program to train Aboriginal Guardians to work with regular DFO fisheries guardians in enforcement.

Monitoring by Aboriginal Guardians commenced in 1992. The Department negotiated agreements with aboriginal Bands to provide monitoring and enforcement services. Aboriginal Guardians from the Band monitor and control Band fishing activities. They now carry out all of the duties of a Fishery Guardian except those requiring the use of force, weapons or searches.

Most Aboriginal guardians are employed on a seasonal basis. Their tenure varies from Band to Band. Some Aboriginal Guardians work in pairs; some work together with full-time DFO Fishery Officers. A few Aboriginal Guardians have subsequently entered the departmental Fishery Officer Career Program and are now employed as Fishery Officers for the Department.

Training

The initial component of the Aboriginal Fishery Guardian Training Program consists of five weeks of classroom training combined with field training with an experienced DFO Fishery Officer. By June 1993, about 150 Aboriginal Guardians had completed the course in the Atlantic and Pacific Regions. People who want to become Aboriginal Guardians must apply and be nominated by their tribal organization prior to commencing the training.

The minimum requirements for entry into the program require the Aboriginal Guardians to: a) meet the security clearance requirements, which are identical to those for DFO officers; b) be nominated and hired by their Band; and c) preferably possess grade 12 or equivalency. The law is a big component of this training and in accordance with the varying educational backgrounds of these individuals, written or oral tests are given.

Advantages

The Aboriginal Guardian Program has become one of the most visible and highly successful elements of the AFS. Not only does it augment DFO's enforcement capacity, but it has become an important vehicle for increasing the involvement of native Canadians in the aboriginal fishery.

- Aboriginal Fishery Guardians have a vested interest in ensuring the viability of their fishery as well as having an intimate knowledge of it.
- The involvement of Aboriginal people as partners in the enforcement of their fishery speaks to their position that they should be the custodians.
- Aboriginal Guardians have a good success rate at apprehending those from their communities who break the law.
- Alternative, non-criminal forms of enforcement have

proven to be successful for the Aboriginal people.

- The program assists in creating a climate to promote conservation, enhance resource stocks, improve quality data collection, reduce capital investment and reduce conflict between user groups.
- The program provides employment to people in their home localities, drawing upon their knowledge, experience and community links.
- This initiative has resulted in better and more equitable management, community-based development, and conflict resolution and has increased the enforcement capability of the Department of Fisheries and Oceans.

Contact Person

Dennis Brock, Director, Enforcement Branch, Department of Fisheries and Oceans (990-0108).

Administrative Penalties as Alternatives To Prosecution (Agriculture and Agri-Food Canada)

Background

Agriculture Canada's 1992 Regulatory Review recommended more effective enforcement options to improve compliance. Agricultural industry associations also saw a need for more equitable enforcement in their sector, including better monitoring of imports. To address industry and departmental concerns, the Food Production and Inspection Branch has designed an Administrative Monetary Penalties System (AMPS).

The Best Practices profile presented here demonstrates the advantages and key elements of alternative methods of securing compliance.

Organization

The Food Production and Inspection Branch (the Branch) intends to replace most prosecutions with administrative monetary penalties. The main goal of the AMPS is to obtain compliance rather than to punish. Criminal prosecution, imprisonment and a criminal record are often overly severe penalties for regulatory violations. The AMPS allows the Department and industry to negotiate appropriate solutions to non-compliance.

Agriculture and Agri-Food Canada relies heavily on warnings, seizure of products and prosecutions to enforce regulations. Yet even such sanctions are often not enough of a deterrent. The AMPS gives regional officials another enforcement option. An AMP could be imposed in lieu of or in addition to other sanctions. The AMPS is intended for serious violations or for situations where other administrative actions have not had the appropriate deterring effect. In addition to fines for serious violations, the AMPS would issue tickets for minor violations.

Where a violation is extremely serious, or a negotiated AMPS solution does not work, prosecution would remain an option. The Branch will continue to prosecute offenses that are conducted wilfully or with negligence, and actions that pose a significant health and safety hazard or constitute significant fraud.

Under the planned AMPS, fines may be reduced or waived if a violator agrees to corrective actions to ensure that regulations are no longer violated. Such solutions may include plant and equipment improvement, changes to processing techniques, training of staff, or maintenance of quality control records. The Department will publicize information about infractions and the fine paid or corrective actions taken by the offender.

Under the AMPS, the Department will be doing less hands-on

inspection in plants and moving toward more of a monitoring role.

The AMPS will permit quicker response to offenses, and will make it easier to deal equitably with imported and domestic products.

The Branch has developed charts or matrices, which will be put into regulations, to ensure consistency and fairness in the application of fines. Among the factors built into the matrices are a range of monetary penalties that depend on the severity of the offence, and that allow increases for aggravating circumstances and decreases for mitigating circumstances. Other factors to be considered are the compliance history of the violator, the degree of intent to commit a violation and the amount of harm done.

Payment of a fine within a prescribed time would lead to a reduction of the fine. If a violator and the Department agree on a course of action, a fine can be reduced by $1 for every $4 that the individual or company spends on immediate corrective action to ensure future compliance. Negotiations could include restitution where an individual or group suffers a determinable financial loss.

A provision will be made for an independent review of any assessed penalty. This review could take the form of an informal meeting, an impartial review by an independent tribunal or an appeal through the Federal Court.

Advantages

- Regulations that have undergone extensive scrutiny and consideration are likely to be better crafted.
- The AMPS will allow the Department to increase enforcement activities because the system is more efficient and cost effective than the prosecution process.
- The AMPS will encourage immediate corrective action by allowing the Branch to negotiate with industry for non-compliance. Corrective action results in better products, improved health and safety and more effective enforcement.
- Applying consistent standards in industry regulation could increase the competitiveness of the agri-food sector.
- Introduction of the AMPS will give regional officials another option for enforcing regulations, making it easier to choose the most appropriate response to violations.
- Rapidity of response could increase deterrence.
- As the Department moves from in-plant inspection to monitoring, the AMPS allows for more appropriate and effective sanctions.
- The AMPS will make it easier to deal equitably with imported and domestic products.

Contact Persons

Reg Gatenby, Regulatory Affairs Division, Food Production and Inspection Branch, Agriculture and Agri-Food Canada (992-2114).

Using Front-End Assessment Guidelines for Regulatory Initiatives (Agriculture and Agri-Food Canada)

Background

Front-End Assessment Guidelines were inaugurated in 1991 at Agriculture Canada, Regulatory Affairs Division, in response to the increasing awareness of problems with the regulatory process. Previously, regulations were being drafted before departmental regulatory policies were completely developed. Failure to determine in advance whether sufficient funds existed to support new regulatory initiatives was contributing to enforcement problems. In addition, industry was complaining about the length of time required to complete the regulations. The Department hoped that use of the Guidelines for regulatory initiatives would ensure that all relevant issues were given full consideration prior to drafting and implementation, thus streamlining the regulatory process and increasing efficiency.

The Best Practices profile presented here demonstrates the advantages and key elements of using front-end assessment guidelines for regulatory initiatives.

Organization

The Front-End Assessment Guidelines document builds on Treasury Board's regulatory policy and includes the criteria used in the 1992 regulatory review carried out by Agriculture Canada.

The Guidelines details the steps Department program officers should take in completing a front-end assessment of regulatory options. Part I of the document contains guidelines for the development and assessment of options. Program Officers must describe the circumstances creating the need for new initiatives; outline the anticipated reaction of industry, consumers and other relevant stakeholders; and compare the regulatory initiatives taken by major trading partners for the subject area. They should, if possible, identify current federal expenditures in the area, and specify all potential non-regulatory and regulatory options that could resolve the issue.

In order to determine the appropriate course of action, program officers must complete a preliminary impact assessment for each potential regulatory or non-regulatory option identified. The Guidelines contain a checklist of questions to be addressed to ensure that the appropriate information is obtained. Program Officers should assess an action's potential impact on society, including environmental sustainability, consumer, welfare, ethics and social values; on industry, using the competitiveness test and the "beneficiary pays" principle; and on government and international trade. Benefit/cost

comparisons are summarized for all affected groups and used to determine the preferred course of action.

Part II of the Guidelines outlines the steps program officers should take to implement the chosen initiative. They must formulate an action plan that will achieve completion by the desired date; prepare an outline of the resource implications of the initiative; develop a communications plan; and begin or maintain consultations with affected stakeholders.

A number of workshops have trained program officers in the use of the Guidelines. Efforts to increase use of the Guidelines at the Department, as well as to streamline the process and improve the quality of assessments being completed, are presently in progress.

Advantages

- Front-end assessment of regulatory initiatives ensures that the impact of proposed regulations on relevant stakeholders is considered prior to drafting and implementation.
- Front-end assessment of regulatory initiatives ensures that the availability of resources to enforce initiatives is determined in advance.
- Front-end assessment of regulatory initiatives enables the Department to identify potential problem areas and amend proposed initiatives accordingly, prior to implementation.
- Using the Front-End Assessment Guidelines ensures that all regulatory and non-regulatory options are identified, and the impact on affected stakeholders adequately assessed for all options.
- Using the Front-End Assessment Guidelines should help those involved in the regulatory process incorporate all relevant regulatory review criteria.
- The Guidelines provides the Department's External Regulatory Panel with a valuable tool to use in overseeing the Department's regulatory plans and policies.

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Future Best Practices Profiles and Presentations

Introduction

Examples of good regulatory practices provided by members of the Regulatory Best Practices Committee are described in a series of profiles presented in Volume 1, Enlightened Practices in Regulatory Programs, May 1993. Additional exemplary practices have come to light, which are noted in this volume. These were reviewed by the Regulatory Best Practices Committee on September 22, 1993.

Other innovative approaches that could be presented in the future as best practices are listed below. We are all aware that a procedure that operates as a "Best Practice" in one context may not be entirely adaptable for another department or situation. That caveat must be borne in mind when seeking to draw lessons from the helpful examples in this volume.

Programs or approaches that constitute "Best Practices" could address public safety consumer benefits, road blocks or line-ups that hamper competitiveness, the soundness of the regulated industry, perceptions of fair treatment by the industry and by individual players, matters of environmental protection, the concerns of politicians, the impact on and prudent use of departmental resources, the credibility of the program, and the credibility and effectiveness of the department. Taking into account these criteria, many regulatory initiatives undertaken by departments could be labelled "Best Practices."

We encourage you to review the "best practice" profile topics outlined below and to consider whether certain programs of your department or agency are success stories that should be shared with the regulatory community. Consider too, whether innovative practices that do not fit the categories covered thus far should be brought to the attention of the Regulatory Best Practices Committee. If so, inform the Regulatory Affairs Division, Treasury Board Secretariat, or the consultants assisting the Best Practices Committee. Contact names and numbers are provided in this volume.

Exemptions, Waivers or Dispensations from Regulatory Requirements

Regulatory programs allow varying degrees of flexibility for inspectors or managers to grant exemptions from standards that may sometimes be unfair or inappropriate. Regulators need to find a balance between observing the essentials, even in the face of industry irritation, and preserving some room for manoeuvring.

We have an illustration from the *Seed Section of Agriculture and* Agri-Food Canada in Volume 1, Enlightened Practices in Regulatory Programs, but would like to hear of additional precedents.

Certification and Training of Investigative or Enforcement Staff Holding Delegated Powers

Enforcement officers and inspectors have extraordinary powers delegated to them to discharge their responsibilities, such as the power to seize records, aircraft, or contaminated products. The public, including regulated industries, must have confidence that these employees have the knowledge and skill to wield such powers. Training and certification are critical.

One illustrative program is the plan by Fisheries and Oceans to train and certify "Aboriginal Guardians" to act as "fishery guardians", initially to monitor and enforce food fishing regulations in aboriginal communities.

Public Consultation or Consensus Building on Regulatory Policy and Practices

Industry stakeholders want to comment on regulatory policy which could have an impact on them. They want to be sure that their freedom to act is not more constrained than that of their competitors. Sometimes consumer groups also want to be consulted.

Health Canada is using consensus building with industry in the development of new regulations. FEARO has established a mechanism in which major stakeholders are given an opportunity to contribute to the development of regulatory policy and regulations. Both approaches are described in this volume and in volume 1, Enlightened Practices. Other departments may have examples of public consultation.

Environment Canada has inaugurated a national office of pollution prevention. Part of this office's mandate will be to set up roundtables with industry to seek consensus on ways to prevent pollution.

Innovative Ways of Avoiding or Recovering Costs

Some departments have found ways to augment inspection services while having industry assume the costs.

In some situations where Transport Canada inspections involve unscheduled travel to foreign countries or to remote parts of Canada, air carriers provide transportation without charge to the inspectors.

The fishing industry pays for Fisheries and Oceans observers on boats off both the Atlantic and Pacific coasts. A recent innovation concerns two B.C. fisheries. Operators wanted to lengthen the season to optimize the value of their catch, and agreed to pay extra enforcement costs incurred by Fisheries and Oceans.

Alternative Methods of *Securing Compliance*

Two examples of alternative methods of securing industry compliance are outlined in Volume 1, Enlightened Practices.

Agriculture and Agri-Food Canada has designed an Administrative Monetary Penalties System (AMPS) as an alternative to prosecution. The system emphasizes compliance rather than punishment for regulatory violations.

Front-End Assessment Guidelines for Regulations

Agriculture and Agri-Food Canada promotes the use of front-end assessments for evaluating and implementing regulatory initiatives. Guidelines are provided to Department program officers to assist them in carrying out front-end assessments. These assessments ensure that all relevant issues are given full consideration prior to drafting and implementing regulations.

Perhaps other departments have examples of similar efforts that should be presented to the Committee.

Education to Introduce New Regulatory Programs

FEARO has developed an education package for managers and practitioners of environmental assessments, to ease the transition to the new Canadian Environmental Assessment Act (CEAA) and related regulations. Other examples of using education as an aid in transition to new regulatory programs may exist, and deserve recognition.

Public Involvement in Regulatory Compliance

Under the new CEAA, a federal authority responsible for carrying out a particular environmental assessment will be required to establish a public registry of related documentary records. It is intended that the public will have quick and convenient access to these records, thus acting as a check on official compliance with environmental assessment responsibilities.

This public registry system will be monitored by FEARO or a successor agency. Perhaps other departments have examples of innovative ways of involving the public in monitoring compliance.

Adoption of International Standards as Industry Benchmarks

Health Canada is considering adopting food safety standards set by an international commission. This move might avoid some duplication and delays in developing standards, and could have competitiveness implications. There may be examples of such a strategy being used by other departments.

Computer-Based Tracking Systems

A number of departments are making innovative use of computers. Some may use computers to keep track of regulations. Others could use data banks to monitor riskier aspects of a regulated industry or as a tool in deciding when to grant an exemption or waiver. Initiatives in this area are likely to interest all departments.

Sharing of Responsibilities with the Provinces and Territories

Mechanism to avoid costly and unnecessary duplication through the orderly sharing of responsibilities could be considered best practices. Environment Canada is hoping to negotiate agreements whereby it will not enforce its regulations if a province has equivalent standards. Other departments may supply examples of current sharing arrangements.

Alternatives to Regulation

This option is a concern of everyone participating in the Best Practices Committee. Environment Canada hopes to establish a "strategic system" for finding alternatives to regulation. Such a system could prove to be a practice worth devising or emulating.

The Regulatory Best Practices Committee

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